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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/542,819	10/04/2006	Eric Inselberg	0128-1 CON4	5908
25901 7590 08/27/2007 ERNEST D. BUFF ERNEST D. BUFF AND ASSOCIATES, LLC. 231 SOMERVILLE ROAD BEDMINSTER, NJ 07921			EXAMINER GELIN, JEAN ALLAND	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 08/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	11/542,819	INSELBERG, ERIC	
	Examiner	Art Unit	
	Jean A. Gelin	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 11/03/06 has been considered by the examiner and has been entered in the application file.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1-50 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding to claim 1-50, the phrase "adapted to" or "capable of" renders the scope of the claim vague and indefinite.

It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-4, 10-12, 14-20, 24-27, 37, 38, 40, 42, 46, 48, and 49-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Krueger et al. (US 60222727).

Regarding claim 1, Krueger teaches a system for enabling interactive participation by audience members attending a live entertainment event at a venue and employing a wireless interactive device having capability (page 10, lines 11-20) to (i) receive and transmit messages (the wireless device passes and receives information (page 5, lines 3-5); (ii) accept input via a user input interface (page 5, lines 3-11); and (iii) display message on an electronic display (page 5, lines 3-11), the system comprising: a wireless communication system adapted to transmit and receive messages with the interactive device (page 4, lines 22-25); means for querying the audience members to respond to at least one query with an answer entered through said user input interface and transmitted by the interactive device (page 5, line 22 to page 6, line); means for receiving the answers at a central processing station or distributed processing stations (page 6, lines 3-9); means for storing the received answers as audience data (page 6, lines 7-9); and a central processor adapted to receive and process the audience data into results (pages 11-12).

Regarding claim 2, Krueger teaches comprising means for broadcasting the results to the audience members (i.e., broadcast real time information to members, page 5, lines 5-12).

Regarding claim 3, Krueger teaches means for disseminating least one promotional message of a sponsor to the audience members through the electronic display (page 9, line 22 to page 10, line 3).

Regarding claims 4, Krueger teaches means for providing the results to the sponsor (pages 5-6).

Regarding claim 10, Krueger teaches wherein said wireless communications system transmits and receives using at least one transmission form selected from the group consisting of radio transmission, microwave transmission, broadband wireless data transmission, ultra-wide band transmission, spread-spectrum transmission, and satellite transmission (page 4, line 22 to page 5, line 2).

Regarding claim 11, Krueger teaches means for broadcasting messages from the interactive device of one of the participating audience members to the interactive device of another of the participating audience members (pages 5-6).

Regarding claim 12, Krueger teaches each of the interactive devices has a unique address programmed therein (page 5, lines 5-12).

Regarding claim 14, Krueger teaches wherein the venue is selected from the group consisting of stadiums, arenas, race tracks, golf courses, and theme parks (i.e., the auction site to conduct live auction, col. 6, lines 10-15).

Regarding claim 15, Krueger teaches querying the participating audience members (page 5, line 22 to page 6, line 30); receiving answers to the querying entered by the participating audience members via the user interface of the interactive device (page 6); transmitting the answers to a central processor; processing the answers into

results (pages 4-5); and broadcasting the results to the plurality of participating audience members attending the live entertainment event (page 6).

Regarding claim 16, Krueger teaches the wireless interactive device employs a form of wireless communications selected from the group consisting of radio transmissions, microwave transmissions, broadband wireless data transmissions, and satellite transmissions (pages 4-5).

Regarding claim 17, Krueger teaches presenting a promotional message to each participating audience member (pages 9-10).

Regarding claim 18, Krueger teaches the promotional message is imprinted on the device (page 9).

Regarding claim 19, Krueger teaches the promotional message is transmitted wirelessly to the interactive device and is presented to the participating audience member either visually or aurally (pages 5-7).

Regarding claim 20, Krueger teaches wherein the promotional message is pre-programmed in the interactive device (pages 9 and page 14)

Regarding claim 24, Krueger teaches the interactive device is adapted to allow the broadcasting of messages from one of the participating audience members to another of the participating audience members (page 6).

Regarding claim 25, Krueger teaches each interactive device has a unique address programmed therein (page 5, lines 3-22).

Regarding claim 26, Krueger teaches the answers are received at a central processing station and thereafter transmitted to the central processor (pages 7-8).

Regarding claim 27, Krueger teaches the answers are received at distributed processing stations and thereafter transmitted to the central processor (pages 7-8).

Regarding claims 37, 40, and 48 Krueger teaches presenting a promotional message from sponsor (pages 9-10); querying the participating audience members (page 5, line 22 to page 6, line 30); receiving answers to the querying entered by the participating audience members via the user interface of the interactive device (page 6); transmitting the answers to a central processor; processing the answers into results (pages 4-5); and providing result to sponsor (page 6).

Regarding claim 38, Krueger teaches broadcasting the results to audience members attending the live entertainment event (page 6).

Regarding claims 42, 46, Krueger teaches querying comprises use of the interactive device (pages 7-8).

Regarding claims 49-50, Krueger teaches wherein the venue is selected from the group consisting of stadiums, arenas, race tracks, golf courses, and theme parks (i.e., the auction site to conduct live auction, col. 6, lines 10-15).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5-8, 31-36, and 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger in view of Junkin (US 6,193,610).

Regarding claims 5-8, 31-36, and 41-41, Krueger teaches all the limitations above except the querying means comprises at least one large screen display visible to audience members in the venue.

However, the preceding limitation is known in the art of communications. Junkin teaches an interactive device for displaying video information to a participant of an interactive game based on the event (col. 2, lines 60-67). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Junkin within the system of Krueger in order to increase image quality and provide a better view to participants.

8. Claims 9, 13, 21-23, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger in view of Von Kohorn (US 5,916,024).

Regarding claims 9, 21-23, and 39 Krueger teaches all the limitations above except comprising at least one prize appointed to be awarded to at least one of the audience members.

However, the preceding limitation is very well known in the art of communications. Von teaches a response unit in a wireless device to answer questions broadcasted via satellite wherein acceptable answers are instantly rewarded (col. 119, lines 26-50). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to implement the technique of Von within the system

of Krueger in order to reward audience members who have been successful in answering right questions.

Krueger teaches all the limitations above except means for providing audio transmission of audible programming to the interactive devices, the audible programming comprising at least one of play-by-play, expert commentary, traffic reports, and weather reports.

However, the preceding limitation is very well known in the art of communications. Von teaches a response broadcasting radio program or television program to viewing or listening audience and provide members to participate in contest (col. 3, lines 6-40). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to implement the technique of Von within the system of Krueger in order to successfully receive and respond to advertiser's task.

9. Claims 28-30, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krueger in view of Ruybal et al. (US 5,801,754).

Regarding claims 28-30, and 47, Krueger teaches all the limitations above except wherein the live entertainment event is a sporting event.

However, the preceding limitation is very well known in the art of communications. Ruybal teaches a theater network can be used to conduct interactive live events such as multi-media business presentation or live auction (col. 3, lines 26-65). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to implement the technique of Ruybal within the system of

Krueger in order to provide audio and video communication during the interactive event between audience member.

Double Patenting

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-58 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-52 of U.S. Patent No. 6,760,595, claims 1-73 of U.S. Patent No. 6,996,413, and claims of U.S. Patents No. 6,975,878, 6,434,398, 6,650,903, 7,248,888, and 7,123,930. Although the conflicting claims are not identical, they are not patentably distinct from each other because anyone of ordinary skill in the art can rearrange the claims of the patents above to arrive

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at the claims of the current application, and claims in the patent and current application contain features that perform the same function.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**JEAN GELIN
PRIMARY EXAMINER**

JGelin
August 17, 2007

